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Paper No. 6

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In re Application of :  
Schroeder et al. :  
Application No. 09/767,422 :  
Filed: January 19, 2001 :  
Attorney Docket No. 030633.0010 :

**OFFICE OF PETITIONS**

**ON PETITION**

This is a decision on the petition filed November 13, 2001, to accord the above-identified application a filing date of January 19, 2001, instead of January 22, 2001.

The petition is **granted**.

37 CFR § 1.10(e) states:

Any person mailing correspondence addressed as set out in Section 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";
- (3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and
- (4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

Issue:

Was "sufficient" postage affixed to the package? A review of Rio Grande District Post Office Instruction number CSS-95-BC/S-011 indicates that the package should have been dispatched to the USPTO despite the fact that full postage was not affixed. Instead, the package was incorrectly returned. Therefore, the application will be given a filing date of January 19, 2001.

It should be noted that the instant decision is based on the specific facts which have been presented including the fact that the original envelope was never opened and the fact that the record fails to indicate that the law firm intentionally underpaid the postage.


**It should be noted that a Certificate of Mailing must be signed by the party who actually mails the letter- by handing the package to a postal employee, placing the package in a dropbox, placing the package in a mailbox, etc.**

**It should be noted that, had the first express mail label shown a date-in of January 20, 2001, instead of January 19, 2001, petitioner might only have been granted a filing date of January 20, 2001, since the package was placed in a normal dropbox and not an Express Mail dropbox.**

Since the requested relief has been granted under 37 CFR § 1.10(e), the petitions under 37 CFR §§ 1.10(c), 1.10(d), 1.181, 1.182, and 1.183, are **dismissed as moot**.

The Application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of January 19, 2001.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.



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for Patent Examination Policy